

1537 SEXUAL GRATIFICATION IN PUBLIC — § 944.17(2)(a)**Statutory Definition of the Crime**

Sexual gratification, as defined in § 944.17(2)(a) of the Criminal Code of Wisconsin, is committed by one who commits an act of sexual gratification in public involving the sex organ of one person and the mouth or anus of another.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant committed an act of sexual gratification with (name other person) involving the sex organ of one person and the (mouth) (anus) of another.¹
2. The alleged act of sexual gratification took place in public.
“In public” means in a place where other people are present or where other people can observe the act.²
3. The defendant knew or had reason to know the alleged act was observable by or in the presence of others.³

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1537 was originally published in 1985 and revised in 1996, 1998, and 2008. This revision was approved by the Committee in August 2020; it updated the comment.

This instruction is for the offense defined by § 944.17 — sexual gratification in public. Offenses involving acts of sexual gratification with a person younger than 18 were formerly covered by § 944.17(2)(b). That subsection was repealed by 1989 Wisconsin Act 332, which created Chapter 948, Crimes Against Children. Conduct formerly prohibited by § 944.17(2)(b) involving children under the age of 16 is likely to constitute sexual assault of a child under § 948.02. Offenses involving sexual gratification with an animal were formerly covered by § 944.17(2)(c) and (d). Those subsections were repealed by 2019 Wisconsin Act 162 [effective: March 5, 2020].

Section 944.17 was extensively revised by 1983 Wisconsin Act 17. Before the 1983 revision, § 944.17 (1981 82 Stat.) was titled “Sexual Perversion.” Subsections (1) and (2) of the former statute have been revised and recodified as subsections (2)(a) and (2)(c) of the current statute.

Section 944.17(3) was created by 1995 Wisconsin Act 165 to read: “Subsection (2) does not apply to a mother’s breast-feeding of her child.” [Effective date: April 6, 1996.]

1. “Sexual gratification” is not defined in the instruction or in the Wisconsin Criminal Code. Guidance as to its meaning may be gained from the context in which it is used in other statutes. See, for example, §§ 940.225 and 944.31.

For the purposes of this offense, it should not be relevant for whose “sexual gratification” the act was committed. Committing the act “in public” is the key fact making the conduct criminal.

2. “In public” is defined as follows in subsec. (1) of 944.17:

(1) In this section, “in public” means in a place where or in a manner such that the person knows or has reason to know that his or her conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual gratification.

This definition appears to create two separate elements. One element is that the act take place in the presence of others or where observable by others. The second element is that the defendant know or have reason to know that the act is in the presence of or observable by others. Rather than lump the knowledge requirement in with the definition of “in public,” the Committee decided it was preferable to treat it as a separate element.

The definition of “in public” used in the instruction is adapted from the statutory definition. No change in meaning is intended.

3. See note 2, supra.